

REMARKS

Claims 1-14 are now pending in this application for which applicant seeks reconsideration.

Amendment

Claim 1 has been amended to remove the informalities identified by the examiner. In this respect, claim 1 incorporate the changes suggested by the examiner. No substantive change has been made and no new matter has been introduced.

Art Rejection

All pending claims 1-14 were rejected under 35 U.S.C. § 102(b) as anticipated by Nozaki (USPGP 2002/0036800). Applicant traverses this rejection because Nozaki fails to disclose or teach at least the sending unit/instruction limitation set forth in independent claims 1, 6, and 9.

In maintaining the same rejection, the examiner now alleges that the claimed sending section/instruction for sending to the server apparatus "a copy permission request for copying the downloaded contents to the external apparatus or recording medium each time before the downloaded contents are to be copied to any external apparatus or recording medium" is merely an intended use, and thus need not be given weight. According to the examiner, Nozaki anticipates the claims because it is capable of carrying out the claimed function.

Applicant disagrees with the examiner's assessment because (1) sending a copy permission request each time before the downloaded contents are to be copied to any external apparatus or recording medium defines what the sending section does, and thus is structural, and (2) sending feature in claim 9 is part of a computer program instruction rather than structure. Either way, it is a legal error for the examiner to conveniently dismiss the characteristic/operational limitation of a claimed element as an intended use.

Here, the limitation of sending to the server apparatus "a copy permission request for copying the downloaded contents to the external apparatus or recording medium each time before the downloaded contents are to be copied to any external apparatus or recording medium" is an operational or functional description of what the sending section does. In other words, it is a characteristic of the sending section to restrict the number of copying.

An operational or functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. See MPEP § 2173.05(g). Moreover, the claim language must be analyzed, not in a vacuum, but in light of the content of the particular application

disclosure and the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art. Note also that the functional characteristic of the sending unit is needed to give life and breadth to the claimed limitation. Indeed, if the sending unit is interpreted in the manner alleged by the examiner, it is not possible to distinguish one sending unit from another sending unit no matter how they are recited. According to the examiner's logic, the claimed sending unit reads on any unit that is capable of sending a permission. Applicant submits that it is improper as a matter of law for the examiner to interpret a claim limitation by ignoring the functional limitation of the claimed sending unit.

Applicant submits that claims 1-14 patentably distinguish over Nozaki because Nozaki fails to disclose or teach at least the sending unit/instruction limitation set forth in independent claims 1, 6, and 9.

Conclusion

Applicant submits that claims 1-14 are in condition for allowance. Should the examiner have any issues concerning this reply or any other outstanding issues remaining in this application, applicant urges the examiner to contact the undersigned to expedite prosecution.

Respectfully submitted,

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DATE

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